

CHAPTER 478

INTEREST AND USURY

SECTION

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§478-1 Definitions. As used in this chapter and unless a different meaning appears from the context:

"Annual percentage rate" shall have the meaning given the term in the Truth in Lending Act.

"Consumer credit" means credit extended to a natural person primarily for a personal, family, or household purpose:

- (1) In which the principal amount does not exceed \$250,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$250,000; or
- (2) Such credit is secured by real property or by personal property used or expected to be used as the borrower's principal dwelling.

"Credit" means the right to defer payment of debt or to incur debt and defer its payment.

"Credit card" means any card, plate, coupon book, or other single credit device issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, from time to time, on credit.

"Credit card agreement" means any agreement that provides primarily for the extension of credit pursuant to the cardholder's use of a credit card. Neither an agreement providing for an overdraft line of credit nor an agreement for a line of credit secured by equity in real property becomes a credit card

agreement for the purposes of this chapter because a cardholder can access it through the use of a credit card.

"Finance charge" has the same meaning given such term by the Truth in Lending Act.

"Home business loan" means a credit transaction (1) in which the principal amount does not exceed \$250,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$250,000; (2) which is not a consumer credit transaction; and (3) which is secured by a mortgage of the principal dwelling of any natural person who is a mortgagor named in the mortgage given as security in connection with the credit transaction.

"Real property" includes stock in a cooperative housing corporation and personal property used or intended to be used as a consumer's residence.

"Truth in Lending Act" means the federal Truth in Lending Act (15 U.S.C. 1601, et seq.), Regulation Z of the Board of Governors of the Federal Reserve System, and the Official Staff Commentary to Regulation Z prepared by the staff of the Federal Reserve Board, and amendments of the Act, Regulation Z, and such Commentary.

§478-2 Legal rate; computation. When there is no express written contract fixing a different rate of interest, interest shall be allowed at the rate of ten per cent a year, except that, with respect to obligations of the State, interest shall be allowed at the prime rate for each calendar quarter but in no event shall exceed ten per cent a year, as follows:

- (1) For money due on any bond, bill, promissory note, or other instrument of writing, or for money lent, after it becomes due;
- (2) For money due on the settlement of accounts, from the day on which the balance is ascertained;
- (3) For money received to the use of another, from the date of a demand made; and
- (4) For money upon an open account, after sixty days from the date of the last item or transaction.

As used in this section, "prime rate" means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter.

§478-3 On judgment. Interest at the rate of ten per cent a year, and no more, shall be allowed on any judgment recovered before any court in the State, in any civil suit.

§478-4 Rate by written contract. (a) It shall in no case be deemed unlawful, with respect to any consumer credit transaction (except a credit card agreement) and any home business loan to stipulate by written contract, for any rate of simple interest not exceeding one per cent per month or twelve per cent a year or, in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), for any rate of simple interest not exceeding two per cent per month or twenty-four per cent a year; and it shall in no case be unlawful, with respect to any credit

card agreement, to stipulate by written contract for any rate of simple interest not exceeding one and one-half per cent per month or eighteen per cent a year.

(b) As an alternative to the rate of interest specified in subsection (a), it shall be lawful with respect to any consumer credit transaction (except a credit card agreement) and any home business loan to stipulate by written contract for the payment and receipt of a finance charge in any form or forms at an annual percentage rate not to exceed twelve per cent, or twenty-four per cent in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), together in either case with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act, and, with respect to any credit card agreement, to stipulate by written contract for the payment and receipt of a finance charge at an annual percentage rate not to exceed eighteen per cent, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The rates in this paragraph shall be available as alternative permissible rates for any of the credit transactions referred to, whether in fact or in law the Truth in Lending Act applies to the transaction, notwithstanding the advance, fixed, or variable manner in which interest or finance charge may be computed under the contract, and whether the contract uses the terms interest, annual percentage rate, finance charge or any combination of such terms. For rate computation purposes, with respect to any contract to which this paragraph may apply, the creditor conclusively shall be presumed to have given all disclosures in the manner, form and at the time contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge.

(c) With respect to any transaction other than a consumer credit transaction, a home business loan or a credit card agreement, it shall be lawful to stipulate by written contract for any rate of interest not otherwise prohibited by law.

(d) The rate limitations contained in subsections (a) and (b) of this section shall not apply to any credit transaction authorized by, and entered into in accordance with the provisions of, articles 9 and 10 of chapters 412 or 476.

§478-5 [OLD] Repealed.

§478-5 Usury not recoverable. If a greater rate of interest than that permitted by law is contracted for with respect to any consumer credit transaction, any home business loan or any credit card agreement, the contract shall not, by reason thereof, be void. But if in any action on the contract proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the creditor shall only recover the principal and the debtor shall recover costs. If interest has been paid, judgment shall be for the principal less the amount of interest paid. This section shall not be held to apply, to loans made by financial services loan companies and credit unions at the rates authorized under and pursuant to articles 9 and 10 of chapter 412.

§478-6 Usury; penalty. Any person who directly or indirectly receives any interest or finance charge at a rate greater than that permitted by law or who, by any method or device whatsoever, receives or arranges for the receipt of interest or finance charge at a greater rate than that permitted by law on any credit transaction shall be guilty of usury and shall be fined not more than \$250, or imprisoned not more than one year, or both.

§478-7 Compound, not recoverable. No action shall be maintainable in any court of the State to recover compound interest upon any consumer credit transaction or upon any credit card agreement whatever.

§478-8 Exemptions from usury. (a) This chapter (except for this section and section 478-3) shall not apply to any mortgage loan transaction wholly or partially secured by a guarantee or insurance or a commitment to insure issued under the provisions of the National Housing Act, Chapter 13 of Title 12 of the United States Code, the Veterans Benefit Act, subchapters I and II of Chapter 37 of Title 38 of the United States Code, and subchapter III of Chapter 8A of Title 42 of the United States Code, the Small Business Act, Chapter 14A of Title 15 of the United States Code, and the Small Business Investment Act, Chapter 14B of Title 15 of the United States Code.

(b) *[Repeal and reenactment on July 1, 2002. L 199, c 99, §5.]* The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

- (1) Indebtedness that is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980;
- (2) Consumer credit agreement of sale made after May 30, 1980, under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest or the manner in which such rate shall be determined is clearly stated. As used in this paragraph, "agreement of sale" includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. Notwithstanding the first sentence of this paragraph, with respect to any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale immediately prior to such maturity or renegotiation or four percentage points above the highest weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board within sixty days prior to the time of extension or renegotiation;
- (3) Indebtedness that is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after June 18, 1982; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property that is given to the seller as part of the buyer's

consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction;

- (4) Transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to Chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by Chapter 412 or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller's right to charge interest under section 478-2; or
- (5) Payment of any claim under section 431:13-108.
- (c) The provisions of this chapter (except for this section and section 478-3) shall not apply to a loan made by an employee benefit plan as defined in section 1002(3) of Title 29 of the United States Code, as amended, or a loan made by the employees' retirement system of the State of Hawaii.
- (d) This chapter shall not apply to any mortgage loan which may be made by a financial institution pursuant to rules adopted by the commissioner of financial institutions pursuant to section 412:2-108.

§478-8.5 Repealed.

§478-9 [OLD] Repealed.

§478-9 Rejection of federal law. It is hereby explicitly stated by the terms of this section that the provisions of Title V, Part A-Mortgage Usury Laws, Mortgages, Section 501(a)(1) and of Part B-Business and Agricultural Loans, of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall not apply with respect to loans, mortgages, credit sales, and advances made in this State, and that this State does not want the provisions of Title V, Part A-Mortgage Usury Laws, Mortgages, Section 501(a)(1) and of Part B-Business and Agricultural Loans, of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this State.

§478-10 Repealed.

§478-11 Repealed.

§478-11.5 Credit cards. With regard to every credit card issuer wherever located and a customer who is a resident of this State and who is given the opportunity to enter into a credit card plan, every solicitation and application for the credit card plan shall set forth all of the following:

- (1) Annual percentage rate, or if the rate may vary, a statement that it may do so and the circumstances under which it may increase and the effects of the increase;
- (2) The date or occasion upon which the finance charge begins to accrue;
- (3) Whether any annual fee is charged and the amount of the fee;
- (4) Any minimum, fixed, transaction, activity or similar charge that could be imposed; and
- (5) That charges incurred by the use of a charge card are due and payable upon receipt of a periodic statement of charges if applicable. For purposes of this paragraph, the term "charge card" means any card, plate or other device pursuant to which the charge card issuer extends credit which is not subject to a finance charge and where the charge cardholder cannot automatically access credit that is repayable in installments.

§478-12 Renumbered as §478-9.

§478-13 Repealed.